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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045345
Party	Plaintiff CASEIKO TRADING, INC
Correspondence Address	JEFFREY R. COHEN MILLEN, WHITE, ZELANO & BRANIGAN, P.C. 2200 CLARENDON BLVD., STE. 1400 ARLINGTON, VA 22201  cohen@mwzb.com
Submission	Motion for Sanctions
Filer's Name	Jeffrey R. Cohen
Filer's e-mail	cohen@mwzb.com, mandell@mwzb.com, docketing@mwzb.com
Signature	/JRC/
Date	09/15/2006
Attachments	Motion for Judgment.9.15.06.pdf ( 5 pages )(182720 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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CASEIKO TRADING, INC.	:	
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Petitioner,	:	
	:	
	:	<u>PETITIONER'S MOTION FOR</u>
	:	<u>JUDGMENT AGAINST REGISTRANT</u>
	:	
GUNZINGER BROS. LTD.	:	
TECHNOS WATCH CO.	:	
WELSCHENROHR	:	
	:	
Registrant.	:	
	:	
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Cancellation No. 92,045,345

Petitioner, Caseiko Trading, Inc. (hereinafter referred to as "Petitioner"), by its attorneys, hereby moves the Trademark Trial and Appeal Board for an order granting it judgment. The grounds for this motion are that the registrant, Gunzinger Bros. Ltd. Technos Watch Co. Welschenrohr (hereinafter referred to as "Registrant"), did not comply with the Board's order to serve Registrant's responses to Petitioner's first set of interrogatories and first set of production of documents and that Registrant has repeatedly failed to otherwise meet its discovery obligations.

Under the Trademark Rules, if a party fails to comply with an order of the Board relating to discovery, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure. *See* Trademark Rule § 2.120(g). Rule 37(b)(2) provides for an order rendering judgment by default against the disobedient party. *See* Federal Rules of Civil Procedure, 37(b)(2)(C). Judgment against a party is the appropriate remedy when that party fails to comply with a

Board order requiring discovery responses. *See, e.g., MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KP*, 59 U.S.P.Q. 2d 1477, 1478 (TTAB 2000).

Petitioner initiated this proceeding on January 9, 2006. Notice of the proceeding was sent to Registrant on January 18, 2006, with an answer due date of February 27, 2006. Thereafter, Petitioner consented to Registrant's motion for an extension of time to answer. The basis for this request was that the Registrant needed additional time to investigate the claim. This motion was granted, resulting in an answer due date of March 29, 2006.

Petitioner served Petitioner's First Set of Interrogatories and First Set of Requests for Production (hereinafter "Petitioner's Discovery Requests") on Registrant on April 21, 2006. Registrant failed to respond to Petitioner's Discovery Requests within the time prescribed by Trademark Rule § 2.120(a). Petitioner's counsel contacted Registrant's counsel numerous times to inquire as to the status of Registrant's response to Petitioner's Discovery Requests. Registrant's counsel was unable to provide any reason why Registrant failed to respond to Petitioner's Discovery Requests.

Petitioner moved the Board for an order to compel Registrant to respond to Petitioner's Discovery Requests on June 13, 2006. On August 11, 2006, the Board ordered that Registrant serve, no later than thirty (30) days from mailing the order, Registrant's responses, without objection, to Petitioner's Discovery Requests. The Board anticipated Registrant's failure to respond to Petitioner's Discovery Requests, stating that "in the event respondent fails to respond to petitioner's discovery requests as ordered herein, petitioner's remedy lies in a motion for judgment pursuant to Trademark Rule

2.120(g), 37 CFR Section 2.120(g).” Registrant failed to comply with the Board’s order to serve Registrant’s responses to Petitioner’s Discovery Requests.

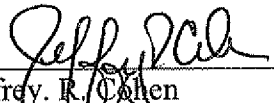
Petitioner served Petitioner’s First Set of Requests for Admissions on Registrant on August 4, 2006. Registrant has not responded to Petitioner’s First Set of Requests for Admissions.

As of the filing of this motion, Petitioner has still not received any responses to the outstanding discovery requests. As alleged in Petitioner’s complaint, the registration at issue might prevent Petitioner from being able to register and protect Petitioner’s mark, and might cast a cloud upon Petitioner’s right to use, develop, and expand the use of Petitioner’s mark. Petitioner’s argument is based on Registrant’s abandonment of its mark. Registrant should not be permitted to maintain its registration if it will not provide discovery. Indeed, Registrant’s repeated failure to meet its discovery obligations should be evidence that it has effectively abandoned its mark. Thus, Petitioner should not be required to incur any further expenses, nor should Petitioner be delayed any further in obtaining registration for its mark.

Accordingly, for the foregoing reasons, Petitioner requests that the Board enter an order for sanctions against Registrant and entering judgment for Petitioner. In the alternative, if the Board decides not to award judgment in favor of Petitioner, then Petitioner requests other sanctions against Registrant as authorized under Trademark Rule § 2.120(g) and Rule 37(b)(2) of the Federal Rules of Civil Procedure.

Dated: September 15, 2006

Millen, White, Zelano & Branigan, P.C.

By:   
Jeffrey R. Cohen  
2200 Clarendon Blvd.  
Ste. 1400  
Arlington, Virginia 22201  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Petitioner's Motion for Judgment against Registrant has been served on Registrant by mailing said copy on September 15, 2006, via first class mail, postage prepaid, to:

Robert Alpert, Esquire  
Ladas & Parry  
26 W 61<sup>st</sup> Street  
New York, New York 10023

  
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Jeffrey R. Cohen